

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARRIET B. BROWN and VETERANS ADMINISTRATION,
VETERANS HOSPITAL, Philadelphia, Pa.

*Docket No. 96-1896; Submitted on the Record;
Issued June 18, 1998*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant sustained an emotional condition in the performance of duty.

Appellant, a food service worker, filed a claim on October 10, 1995 asserting that she was being harassed by a supervisor and that this harassment continued until she was terminated from her employment in September 1995. Asked to provide a statement detailing the particular employment factors to which she attributed her major depression, appellant stated that she was assigned to work at the medical center on June 6, 1995 and that she came into contact with a supervisor named Harry Larkin, who she claimed harassed her on a daily basis and wrote her up "every time I made one move in the Dietetic Department." Appellant stated that she had many disagreements with Mr. Larkin "on the way things weren't and were done." She stated that she noticed a lot of unfair labor practices, favoritism and mismanagement. She stated that her supervisor wrote her up 10 times in a 6-month period and that he got two employees to falsify derogatory statements about her, which led to her termination. Appellant also stated that her supervisors had spread rumors about her being a thief.

A psychiatric report dated November 10, 1995 from Dr. Stuart Wolfe indicated that appellant, according to her own account, had been an excellent employee, had been commended for her work and had been an exemplary employee until the termination of her employment abruptly and with no warning, with no correctives, with no suggestions for whatever complaints were issued against her. The report stated: "The abruptness of this termination led to her becoming acutely depressed, feeling worthless, sad, mistreated and enraged."

The chief of the Nutrition and Food Service stated that the employing establishment did not concur with appellant's allegations. She stated that Mr. Larkin had several meetings with appellant, her union steward and EEO representative, and that appellant received disciplinary action for unsanitary work practices, was charged AWOL on one occasion for leaving her

assigned work area, was disrespectful to her supervisor and sometimes refused to complete her assignments.

In a decision dated February 9, 1996, the Office of Workers' Compensation Programs denied appellant's claim, finding the factors to which she attributed her condition were either not established as factual or were not in the performance of duty. Appellant disagreed and requested reconsideration. On May 3, 1996 the Office denied appellant's request.

The Board has duly reviewed the record on appeal and finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

Workers' compensation law does not cover each and every injury or illness that is somehow related to employment.¹ An employee's emotional reaction to an administrative or personnel matter is generally not covered. The Board has held, however, that error or abuse by the employing establishment in an administrative or personnel matter, or evidence that the employing establishment acted unreasonably in an administrative or personnel matter, may afford coverage.² Perceptions alone are not sufficient to establish entitlement to compensation. To discharge her burden of proof, a claimant must establish a factual basis for her claim by supporting her allegations with probative and reliable evidence.³

Appellant attributes her emotional condition to the actions of her supervisors Mr.Larkin. The psychiatric evidence indicates that she also attributes her emotional condition to the termination of her employment. These are administrative and personnel matters and, as a general rule, a claimant's emotional reaction to such matters is not covered by workers' compensation. Appellant has submitted no probative and reliable evidence to substantiate that her supervisor erred or was abusive or unreasonable in any disciplinary matter or in otherwise discharging the duties of his position, nor has appellant submitted probative and reliable evidence to substantiate that the termination of her employment was in error. The Board has held that an employee's charges that he or she was harassed or discriminated against is not determinative of whether or not harassment or discrimination occurred,⁴ nor is workplace harassment established by the filing of complaints or grievances.⁵ Without supporting evidence of harassment, discrimination or wrongful termination, or some other documentary evidence to substantiate her assertions of error or abuse or unreasonable conduct, the record in this case is insufficient to establish a factual basis for appellant's claim of a compensable injury. For this reason, the Board finds that the Office properly denied her claim.⁶

¹ *Lillian Cutler*, 28 ECAB 125 (1976).

² *Margreate Lublin*, 44 ECAB 945 (1993).

³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁴ *O. Paul Gregg*, 46 ECAB 624 (1995).

⁵ *Alice M. Washington*, 46 ECAB 382 (1994).

⁶ See *Anne L. Livermore*, 46 ECAB 425 (1995) (holding that the claimant failed to submit evidence corroborating discrimination, intimidation or harassment such that she did not establish a compensable employment factor).

The February 9, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
June 18, 1998

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member